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Free movement of labor, free movement with social entitlements?

How to avoid social policy becoming a source of inequality for the internal migrant workers within the EU and in the P.R. China?

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Abstract:

Within the European Union (EU) and the People's Republic of China (PRC) the increasing mobility of individuals has become a major policy concern of how to guarantee this group with access to public social services and guarantee their social entitlements such as public old age pensions. Since the right to welfare is defined by national citizenship or local residence, traditional organizational principles are challenged by the phenomenon of migration between EU member countries, and between Chinese provinces respectively. The phenomenon that we are studying in this paper are the legal and administrative arrangements to guarantee internal migrant workers the access to public old age pensions and the portability of their accumulated entitlements within the member states of the EU and within China that both display a territorially highly fragmented public pension system. The time we are looking into is from 1993 to mid-2012. In respect of the data, we rely on document analysis of legal texts and government documents, complemented by a limited number of expert interviews.

The preliminary results of our research show, that despite the major differences the EU and the PRC display concerning the structures of the state and the economy, the measures and the process how they have been established show similarities. Remaining differences can be explained by the distribution of competences and fiscal power of the higher level government – the European level institutions in the EU and the central government in the PRC that are applied to structure the incentives of the lower level governments in charge of the administration of the public pension schemes.

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1. Introduction

Within the European Union (EU) and the People's Republic of China (PRC) the increasing mobility of individuals has become a major policy concern that relates to the phenomenon of rising inequality in respect of access to the social security system, and will aggravate with the ageing of the society and insufficient levels of public pensions. For the governments in both entities the challenge arises, how to provide social policies in an equal and equitable manner to the increasing number of internal labor migrants without undermining the logics of providing public pensions or their very financial basis. Since the right to welfare is defined by national citizenship or local residence, traditional organizational principles are challenged by the phenomenon of migration between EU member countries, and between Chinese provinces respectively.

Even though the European integration is going forward “the nation state is still the repository of educational, welfare, and public health functions and regulation of social distribution” (Soysal, 1994, p. 157). In China, public social policies are provided on the basis of the household registration status (hukou) and considering the territorial fragmentation of the social security system in the mid-1990s we better speak of systems rather than one Chinese social security system. The hukou does not only divide the population in urban and rural, but also defines the exact place, in which an individual can claim their social benefits or services.

Describing the phenomena of labor migration, it is a transnational event in Europe, whereas in China domestic migration from the interior provinces to the coastal provinces dominates. This observation underlines the importance we need to attach to the definition and conceptualization of ‘migrant workers’ in the two cases under study. We want to focus on the labor migration of citizens of EU member states within Europe and Chinese nationals migrating between regions within China. In both cases we speak of internal labor migration.

Despite the major differences the EU and the PRC display concerning the structures of the state and the economy, the challenges to guarantee migrant workers and their families’ access to social policies across the respective territories display major similarities. The challenges are the diversity in the socio-economic development levels and the legacy of the fragmentation of social security systems across the EU and within China. In the absence of legal protection and supervision, local social policy actors have no incentives to provide migrant workers access to public social welfare. A term to describe for this phenomenon is “welfare chauvinism” (Freeman, 2009; Svallfors, 2012), that represents the sentiments in the indigenous population against sharing their welfare with outsiders. The leading question of the paper

is “*How is the access to public old age pensions and the portability of accrued entitlements for migrant workers guaranteed in the territories of the EU and in China?*” In our paper we want to compare the development trajectory of legal and administrative measures within the EU and within the PRC to support the case of internal migrant workers in the time from 1993 to mid-2012. After answering the main research question, we want in a second step analyze how to explain for observed similarities or differences. In respect of the data, we rely on document analysis of legal texts and government documents, same as statistical data on the number of migrant workers. The paper will be structured as follows: in the next section we will discuss the existing literature on the phenomenon to be studied. In the third section we will discuss our theoretical framework, section four will shortly deal with our research design. Sections five and six will deal with the developments of the two cases, before the systematic comparison and analysis will be done in section 7, section 8 concludes.

2. Migrant workers and social security

The phenomenon that we are studying in this paper are the legal and administrative arrangements to guarantee migrant workers the access to public old age pensions and the portability of their accrued entitlements in the territories within the member states of the EU and within China. The cases we are studying in a comparative perspective are the People’s Republic of China (PRC) and the European Union (EU) which both taken as entities display a strong feature of territorially fragmented social security systems.

The social implications of labor migration have received ample attention in academic research. However, the study on the phenomenon of labor migration from developing countries to advanced economies such as Western Europe or Northern America (Power, Garling, & Hardman, 1979; Ruhs & Anderson, 2010b) and the domestic migration within the PRC (Chan & Ngai, 2009; Li & Zhang, 2011; D. F. K. Wong, Li, & Song, 2007; L. Wong, 2011; Xu, Guan, & Yao, 2011) follow largely disconnected research agendas. One of the first tasks to be fulfilled prior to be able to make a comparison between the EU and the PRC is to provide an overview of the definition of the term migrant worker and present the existing scholarship on the access of migrant workers to social security.

Migrant workers

Different definitions of migrant workers are used in the field of migration studies, as both components to the term can be interpreted quite differently.

As for the concept of migrant, scholarship is riven by binaries such as “forced vs. voluntary, temporary vs. permanent, legal vs. illegal” (King, Skeldon, & Vullnetari, 2008). It is yet one that stands out – the differentiation between internal and international migration. Even though research had been equally dealing with both phenomena, “‘migration’ has somehow come to mean ‘international migration’” (King et al., 2008, p. 2). Scholars working in the tradition of the latter provide the following definition and differentiation of migrant workers:

“A migrant may be broadly defined either as a ‘foreign born’ (meaning all persons born outside the host country regardless of their citizenship) or as ‘foreign national’ (persons without the citizenship of the host country). The latter comprises two groups, those who are settled (i.e. persons with permanent residence status), and those who do not have long-term residence rights (....).” (Ruhs & Anderson, 2010a, p. 13)

National borders are equally important as defining moment for both phenomena, and with the emergence of regional integration projects and free movement of labor across countries, the line of division has become increasingly blurred. An additional factor might also be the place of origin of the migrant workers and their families. Giving an example, the EU differentiates between nationals of EU member states and third country nationals in the treatment of migrant workers.

Using the term ‘worker’, often implies that the migrants are low skilled, which is not necessarily the case. An Austrian skilled worker employed in Sweden is in the same way a migrant worker as a university teacher who was born in Gansu, working in Shanghai. Ruhs and Andersen’s (Ruhs & Anderson, 2010b) edited volume gives a clear account of the various occupational backgrounds and motivations of individuals to migrate to the UK for work. In various studies, self-employed and employed or worker and employees are differentiated. As it is difficult to keep track of the self-employed, we simply focus on employed workers of all education levels and occupations in this paper.

Social security

Labor migration as such is a phenomenon that predates the modern welfare state, and international solutions to the problem of guaranteeing migrant workers access to protection have been developed and discussed in international forums as early as the beginning of the 20th century. In 1919 the International Labor Office (ILO) has even set objective of the “protection of the interests of workers when employed in countries other than their own”(International Labour Office) in the preamble of its constitution.

On December 10, 1948 it was yet another international organization that laid the foundation of the right to social security becoming a universal right. Langendonck (2007) equals *Art. 22: Everyone, as a member of*

a society has the right to social security in the universal declaration of human rights with the birth moment of a new right. Whereas the right to social welfare is traditionally related to citizenship (Marshall, 1950), transnational scholars in the 1990s claimed that permanent residence, coupled with the appeal to universal rights, had largely replaced citizenship as the basis for claiming social rights (Berezin, 2003; Morris, 1997). Under this premise the distinction between citizen and alien had seemingly eroded. However, Goodwin-White (1998, p. 420) presents a different reality at the example of the US in 1997, with the case of legal residents in the US suffering from being deprived of the social security benefits. Since these findings are quite opposing, the final verdict is still out if citizenship was indeed replaced by a stronger focus on universal social rights.

It was already in the early 1960s that a commentator on the ILO conventions highlighted the technical problems related to the application of social security legislation to migrant workers, and differentiated them into three classes:

1. Equality of treatment for aliens and nationals within one country
2. The export of benefits on behalf of persons residing abroad
3. Maintenance of the rights of migrant workers and the way the resulting costs are met

(Netter, 1963, pp. 31 - 32)

There have been numerous grounds on which not only advanced liberal democracies but also other receiving countries have discriminated against the migrant workers and denied them equal access to the social security system. Kremalis (2007) confirms that even in the new millennium “the right to social security and degree of enforceability has mainly been left to the ad-hoc decisions of national legislators, judges and administrators” (p.152).

Holzmann, Koettl, and Chernetsky (2005) developed a typology of social protection for migrant workers, differentiating for regimes that take into consideration the access to social protection and portability of social entitlement for international migrant workers. The typology received further refinement in the work of Holzmann and Koettl (2011) and includes the following regimes and respective descriptions:

Regime I (Portability) includes all legal migrants enjoying indiscriminate access to social services in their host country, and home and host country have concluded a bilateral or multilateral social security agreements to guarantee full portability of accrued benefits.

Regime I is the most favorable regime in terms of formal social protection for migrants. (....)

Regime II (Exportability) includes all legal migrants who have access to social services and social security in their host country without a bilateral arrangement being concluded between their host and origin country. For example, migrants may receive benefits abroad, but cannot rely on totalization of their contribution periods, i.e. eligible benefits are made exportable but acquired rights are not fully portable. The extent to which benefits are payable abroad is exclusively subject to national legislation, and host and home country do not cooperate when determining and paying benefits. (....) This regime concerns the largest number of international migrants.

Regime III (Access exclusion) includes all legal migrants who do not have access to social security in their host country—either because they are excluded or because there is no social security system in their host country. (...) It should be noted that despite this disadvantage of access, migrants are also not required to contribute to long-term benefits like old-age pensions, thus strictly speaking, they do not lose contributions and may, in principle, contribute into a private scheme elsewhere or remain insured in the home country, if possible.

Regime IV (Informality), finally, includes all undocumented migrants who arguably face the greatest challenge regarding their social protection. They have very limited access to social services and social security and are subject to unchecked and unregulated labor market conditions. This regime particularly concerns migrants moving between lower-income countries.

(Holzmann & Koettl, 2011, pp. 4-5)

In the analysis the authors research the influence of international law, bi-lateral agreements and national law on the practice in selected nation states. The member states of the EU and other regional economic integration projects are mentioned in the paper of 2011 for the first time. China does not make part of the case studies.

There are a number of research projects who have focused on the developments within Europe or within China covering migrant workers in the respective social security systems (Alti & Ferrera, 2001; Erhel & Palier, 2005; M. Ferrera, 2003; Geddes, 2008; Sakellaropoulos, Berghman, & Amitsis, 2004; Wang,

2011; Xu et al., 2011). However, by doing so, they have not necessarily taken a comparative approach, a comparison between the EU and the PRC as such absent. In Europe the EU and its predecessors have played a decisive role in advancing the coordination of social policies and especially the guarantee of the social rights of migrant workers. In Chinese academic research this remains a rather blind spot. An exception to this general picture is the work of Prof. Zhou Hong who has been actively studying the EU, including its ambitious social agenda – such as the features in the Lisbon Agenda (Zhou, 2007). Most of the research of Chinese scholars is more geared towards the practice in individual European countries and their social policy development. Research projects are often motivated by finding out more about the policy practice and turning them to policy recommendations, e.g. the German model of social security (Lu, 2009) or the transition of former communist countries in Eastern Europe to market economies including welfare state features.

The research agenda we suggest is challenging, but yet a promising research venture as the cooperation between Chinese and European scholars on comparing China with individual national models has shown in the past. Examples for successful and outstanding research are the comparative exercises initiated and accompanied by Prof. Zheng Gongcheng and Prof. Ulrich Becker on the German and Chinese social security system (Becker, Zheng, & Darimont, 2005) or the cooperation between Prof. Olli Kangas and Prof. Lin Ka on comparative approaches putting Northern European welfare states and the emerging Chinese welfare state in perspective (Lin & Kangas, 2006).

For the moment, there are no research projects or publications that take up this research to the European level. As mentioned before, the comparison with individual European countries or the comparison to parts of countries that constitute the EU such as Eastern Europe remain the most advanced studies to be found. Unsurprisingly, senior researchers with long standing experience studying social security systems with the PRC and the EU at large respectively use the term of *fragmentation* to describe the respective situation. For China this is most prominently, Prof. Zheng Bingwen (B. Zheng, 2009), on Europe the German Stephan Leibfried and the American Paul Pierson who also co-edited the book *Europe social policy: between fragmentation and integration* in the mid- 1990s (Leibfried & Pierson, 1995). Using the same terminology underlines again the similarity of challenges and problems strongly suggest a comparison between the EU with the People's Republic of China in respect of social policy making and welfare provision, rather than comparing an individual European country to the PRC.

3. Free movement for workers, free movement with social entitlements?

In the previous section we discussed existing scholarship on the access of migrant workers to social security systems and the portability of social entitlements in general, same as the cases of the EU and the PRC. Whereas universal rights to social security seemingly support the claim of migrant workers to equally benefit of social security arrangements, the reality shows a different picture of discrimination, partial or complete loss of entitlement or even exclusion from social protection. It is the stipulated goal of this research to compare how migrant workers in the EU and the PRC are guaranteed the access to public social policies and how the specific arrangements or changes over time can be explained.

Regimes

As for the arrangements to guarantee access to and portability of public pension entitlements for internal labor migrants within the EU and China, we will refer regime types developed by Holzmann and Koettl (2011); Holzmann et al. (2005) that were discussed in the previous section and add a fifth regime type. The regime type 0 we name universality/ systems integration. The solution to guarantee equal and fair access to public social policies and portability, the fragmented systems are undergoing an integration process that is dominated and overseen by a higher level authority. Accounting rules for benefits are harmonized which facilitate the portability in case pensions remain pooled on local level. In case the harmonization includes the pooling of pension funds at higher level, portability even becomes a redundant issue.

Determinants of regime types

In the previous section we also encountered a number of arguments that supported the exclusion of migrant workers in the social protection systems of the receiving entities. We want to contrast those with arguments that actually speak in favor of inclusion, in order to build competing hypotheses.

Netter (1963) presents four different types of grounds on which national administrations based the discrimination of migrant workers concerning social security: legal – migrant workers participate only to a limited extent in the life of the country that they reside in; demographic – the receiving country has no interest in encouraging the birth of kids, unless the children are going to be part of the national community; financial - smaller contribution made by migrant workers than residents/ nationals; political - granting of social security benefits to foreign workers should be subject of international negotiation.

We expect that the access to social security and the guarantee of entitlements is dependent on the functional and institutional context - the economic and legal situation of territorial entities and the

existing social administration structures, as much as it depends on the preferences and administrative capacities of actors in the respective polity. This leads us to a functional argument and the theories of regional integration. Functional theories assume that a certain cause will necessarily trigger the establishment of new organizational forms or arrangements.

In this paper we are interested to explain for the regime types present in economically and politically integrated, yet in respect of the social security system territorially fragmented entities such as the EU and the PRC. Economic integration in form of establishing a common market is the foundation of the European and other regional integration projects. Considering the mobility of labor as essential to the functioning of an internal market, integration of social security systems in order to avoid negative incentives for labor mobility, seems to be logical spill-over. Streeck therefore regards “the establishment of transferable social entitlements, as a measure to buttress free movement” (Streeck, 1996, p. 76) within the European Union. While establishing these the European level policy has been largely concerned with ‘technical matters’ rather than with ‘social conscience’ (Lodge, 1989). In this line, the spill-over effect does not follow a simple functional logic, but is strongly influenced by interests of actors on the EU and nation state level in both politics and bureaucracy. In the PRC we assume a similar constellation, even though we have a unitary state, its economy is structured more in federal terms which presumes competition among the different provinces and more local levels of government (Cao, Qian, & Weingast, 1999; Montinola, Qian, & Weingast, 1995; Qian & Weingast, 1997). Furthermore, social policy has been strongly decentralized in the time of opening up and reform and regarded as functional complementary to economic policy. Whereas the local state actors can fear the disadvantage of including the migrant workers in their social security system, they can on the other side quite positively search for opportunities to include this group of people as they can win in legitimacy (Euzeby & Euzeby, 2007).

The inclusion of internal migrants will depend on the (1) institutional context: the existence of a social security system, and sufficient administrative capacity of the organizations involved in providing social security in the territorial entities the EU and PRC are composed of, (2) preferences of the actors involved in the administration of the pension scheme: these preferences depend on the incentives for the governments in respective territorial entities to guarantee access and portability rights. These incentives can be intrinsic of the respective units – this means they start own initiatives for inclusion due to (a) economic or normative reasons, or (b) externally imposed from a higher level, the EU level or the Chinese central government respectively. In respect of the latter, two conditions are key, the higher level has itself an interest in guaranteeing access and portability of social entitlements to internal migrant workers, and the necessary competences and administrative and fiscal power are vested in it.

From structures, capacities and power to regime types

Against the background of the above mentioned factors we formulate hypotheses on the existence of regime types the EU and within China in the time from 1993 to present. As we are not interested in the informal labor market and social security, we have again four possible regime types – 0, I, II, and III.

Regime 0 – harmonization / system integration will be established, if a social security system is in place in all entities covered by the territorial unit, and if the capacities of the organizations involved in providing social security is high AND the higher level government has an interest guaranteeing access and portability of social entitlements to internal migrant workers, and the necessary competences and administrative and fiscal power are vested in it.

Regime I – portability will be established, if a social security system is in place in all entities covered by the territorial unit, and if the capacities of the organizations involved in providing social security is high. Furthermore, while the higher level government is missing the competences and administrative and fiscal power to harmonize the systems across previous lines of fragmentation, there must be an intrinsic interest of local entities to establish bi-lateral agreements or multi-lateral agreements to coordinate social security schemes, as they see an advantage in labor mobility or fear social dumping.

Regime II – exportability will be established, if a social security system is in place in all entities covered by the territorial unit, and if the capacities of the organizations involved in providing social security is high. Furthermore, while the higher level government is missing the administrative and fiscal power to harmonize the systems across previous lines of fragmentation, in the absence of the aforementioned intrinsic interests of local entities to establish a regime of bi-lateral or multi-lateral agreements, internal migrant workers will depend on the legislation of the receiving entity.

Regime III – access exclusion will be established, if a social security system is not in place in all entities covered by the territorial unit, OR if the respective receiving local receiving entity has neither intrinsic, nor externally imposed incentives to grant internal migrant workers access to its social security system.

4. Searching for the regime types in the European Union and the People's Republic of China

As a research design we have chosen a small-N comparative case study format. This allows us conduct a systematic comparative study on the commonalities and differences that explain for the regime types we observe in the Peoples Republic of China (PRC) and the European Union (EU) in the time from 1993 - 2012.

The phenomenon that we are comparing is the legal and administrative arrangement to guarantee access to social security for 'internal migrant workers' and the portability of their accumulated entitlements in the PRC and the EU at the example of public old age pensions. Both entities face large internal disparities, as the socio-economic developments highly differ. This has lead to the phenomenon of an increasing number of internal migrant workers who work outside the territories that traditionally define their access to social security. When talking about internal migrant workers in the two cases, we refer to the voluntary migration of individuals motivated by the search for work. In respect of the time dimensions, the migration can be of temporary or permanent nature. Internal is understood as the migration of EU citizens across national borders within the EU and the migration of Chinese nationals within the PRC. In both instances these internal labor migrants can be clearly distinguished from international labor migrants. This specification is specially catered for the comparison of the phenomenon of labor migration within the EU and the PRC³. The differentiation is based on a criteria related to place of hukou registration (China) and nationality (EU).

We elaborate on internal and international migrant workers more in detail. In the case of the EU, internal migrants are so called "Community nationals", migrant workers with the citizenship of one of the countries making part of the European Communities. EU citizenship rights have been defined in the treaty of the European Union in 1993 (see Ackers & Dwyer, 2004). International migrants are non-EU nationals – also referred to as Third country nationals (TNCs).

In China the word migrant workers is often synonymously used with the so called 'floating population'. In both cases it refers to Chinese nationals who work at a place different from the locality they have been born in. However, the latter term is rather a subgroup of mainly rural to urban migrants. In the Chinese household survey a differentiation between two types of migrant workers within the boundaries of the PRC is made: outward migrants and local migrant workers. Outward migrant workers are working in

³ For other advanced regional integration projects such as Mercosur or NAFTA, we could also differentiate between migrant workers from the participating countries and those from outside.

another entity than the one in which they have their registered hukou. Local migrant workers are those with rural hukou who work in urban areas, while remaining in the territory of their registration. International migrants in the Chinese case are workers from Europe, North America or neighboring Asian countries with local contracts⁴. Only little to no research has been done on this group, yet it will also not be object of this paper.

The focus of this paper will be the comparison of the arrangements for internal migrants in the EU and the PRC respectively. Ideal typically we consider the outward migrant workers in China as equivalent with the cross-border migrant workers holding the citizenship of an EU member state as internal migrants.

Table 1:

| | PRC | EU |
|----------------------|--|--|
| Internal | PRC nationals working outside the territory of their hukou, within the PRC | Citizens of a EU member states in other EU member state |
| International | Foreign nationals working in China (international migrant workers) | Non-EU citizens working in the EU (Third country nationals (TNCs)) |

As for the time frame we have chosen to provide a historical overview of the developments, whereas we focus on the developments in the last two decades from 1993 to present more in depth. We have chosen for the time period on the basis of both data availability and historical significance. For the case of China, the period of 1993 -1994 constitutes a mile stone year, as officially the goal of establishing a socialist market economy was recognized and efforts to build a national social security system were enhanced. In the case of the EU, 1993 constitutes the establishment of the European Union, the treaty underlying it, also stipulates more clearly than before the equal rights of citizens of member states across Europe.

The EU is a project of regional integration of independent nation states that has grown from 6 founding members in the 1950s to currently 27 member states that come to form an ever closer cooperation. The

⁴ Even though the figures are comparatively small, the implementation regulations of the Social Insurance law have initiated a major debate, if and to what extent these foreign nationals should be part of the national social security system. Ex-pats = foreigners with a working contract with a company in another country posted to China are not considered migrant workers.

PRC on the other side is in constitutional terms a unitary country, with external territorial boundaries defined by the borders of the late Qing Empire. In respect of the political system and state structure it is a one party state in a country in which officially 32 sub-national units are differentiated, and whose organization rests upon a multi-level government of up to 5 different levels of government (depending on the province, the number of levels varies between 2 - 5). Given these characteristics we could speak of a most different systems design from the outset of research.

As for the structured comparison, we will first of all look into the legal and administrative structure of providing social security in the two entities. This concerns the number of actors, their relationship and distribution of competences in the field of providing social security. Next we will compare the arrangements to guarantee:

1. Access to public pension system: *Do internal migrant workers have access to participate in public pension policies, what are the conditions?*
2. Portability of pension entitlements: *How are the pension entitlements of internal migrants dealt with, when they are moving to other localities or retiring outside of the place they acquired these entitlements?*

The necessary data can be found in government documents and reports of international organizations concerned with social security or the specific issue of migrant workers.

In a second step we will analyze how the development and current status of the structures providing access to migrant workers took shape and can be explained. In the previous section we already identified a number of explanatory variables for the form and process of including internal migrant workers in social security systems: (1) institutional structures: the existence of a social security system and the administrative capacity of the organizations involved in providing social security, and (2) preferences of the entities in charge of administering the public pension system which are decided upon by incentives for the governments in these territorial entities to guarantee access and portability rights.

The administrative capacity will be operationalized as the existence of specialized organization in charge of governing pension schemes with a sufficient technical as well as human resource base. Do records of insured exist and do the bureaus have sufficient staff to communicate and exchange with other territorial bureaus.

Receiving entities can provide access to internal migrants due to intrinsic or externally imposed incentives. Intrinsic incentives are operationalized as the understanding of the inclusion of internal

migrant workers as materially beneficial for the respective entity or morally required. As for the externally imposed incentives and their effectiveness, they depend first of all on the existence of interest of the higher level to engage in social policy making and its regulation at all. In a second instance, the competences of the higher levels are to be found in legal text such as the constitution of the PRC and the treatise of the EU. Administrative capacities is another qualitative descriptive indicator that looks into the comparable size of the higher level administrative bodies and the absence/ presence of mechanisms to sanction non-compliance, absence/ presence of effective monitoring. The last indicator of financial capacities of the higher level government measures the revenues compared to the local/ national level governments.

5. The European Union

The European Union (EU) is the entity representing the most advanced project of regional integration of currently 27 states comprising the domains of economy – the common market (completed in 1992), politics – the political union (since Maastricht, 1992) and finance (European monetary union, 1999). However, these projects are not fully integrated – which means that not all members participating in the EU are also taking part in all the domains to the same extent. Key examples are the European Monetary Union that comprises only 17 out of the 27, or the Schengen Agreement on border free mobility of goods, services and persons across the EU that still has not been ratified by the UK. Social policy has for a long time be regarded as a step child of the European integration project (Hemerijck, 2012), and has yet grown into one of the areas the EU has won in influence. In its agenda social policy is receiving increased attention, especially though since the mid-1990s. Starting with guaranteeing the rights of citizens of the member countries working and living in other countries than their home country, firstly by non-discrimination and labor standards, the portfolio now comprises all social policy programs and covers the population of the EU as a whole. Economic and social cohesion across Europe has become one of the leading paradigms of the EU, and the successful development towards a social Europe is a key component in it.

Looking into the landscape of European welfare states, at a moment where the Union was counting 15 and even less members, leading scholars already brought forward the question what the future of the European welfare states might be (ongoing) “fragmentation or integration” (Leibfried & Pierson, 1995; Pierson, 1995). The answer at that moment was a clear confirmation of fragmentation. With the enlargements in the 2000s and the accession of former communist countries of Central and Easter Europe,

the levels of disparity in respect of socio-economic development levels and difference in institutions has even grown bigger. Nonetheless, with the further political and market integration, and last but not least the establishment of the European monetary union, it is interesting to look in how far this has also impacted on further integration in the realm of social policy. The number of academic contributions on social Europe and European social policy has been thriving in the early 2000s (Ackers & Dwyer, 2004; Bonoli, George, & Taylor-Gooby, 2000; Dreze, 2002; Maurizio Ferrera, 2005; Hemerijck & Berghman, 2004). In this section, we will look more in detail, what the implications of social Europe are for the internal migrants and their access to public pension systems and portability of their accrued entitlements.

National pension systems within the EU

The architecture of national pension systems in the member states of the European Union show a large range of variety. Due to historical legacies, but also the more recent reforms towards multi-pillar pension systems advocated by the World Bank that put emphasis on the increased role to be played by private arrangements each pension system is unique. Speaking in terms of the three tiers of a pension system, we can differentiate between the first tier that shall guarantee a minimum income that can be guaranteed by basic public pensions or social assistance, an earnings related second tier, that can be in the public (statutory pensions scheme/ mandatory occupational pensions) or private realm (firm level or sector level occupational pensions), and a third tier of private savings or life insurance products that can be object to tax benefits (Ebbinghaus, 2011, p. 10). Whereas first tier pensions fall in all cases in the public realm, the differentiation between public and private pensions in the second tier is often impossible (Berner, 2009). In our research we focus on the public pensions that concern the first and to a limited extent second tier pension schemes which are public or private, yet mandatory by law. It is of special relevance to present on what basis these pensions are provided and how benefits are accrued. The report of the OECD (2011) provides us with the most recent comparative information on the architecture of pension systems of most of the EU member states. In respect of the first tier pensions it differentiates between resource tested, basic (a flat rate benefit for each retiree, irrespective of income or nationality), and minimum (OECD, 2011, p. 106) and 19 out of the 21 EU member states covered in the study provide such a first tier, yet in different forms. As for the income related second tier, only Ireland does not provide a mandatory scheme, the remaining 20 EU member states provide second tier pensions in which benefits are accrued according to the defined benefit (DB) or defined contribution (DC) method. A special form of the DB method is the assignment of pension points. Each earned pension point depends on the earnings of an insured person in each year. At retirement, the sum of pension points is multiplied by a pension-point value to convert them into a regular pension payment. In table 2, we provide an overview of the diversity. Next to these

structural characteristics, the level of pension benefits is also strongly influenced by the range of the years of the vesting periods to be eligible for pensions and non-linear accrual rates (Holzmann & Koettl, 2011, pp. 26-29). Under these premises, the reconciliation of labor mobility across EU member states and the question of the portability of pension entitlements seems to be a nearly impossible task and the question become all the more interesting, how the EU member states or the EU act, to tackle this issue. Before we turn to that question, we yet look into the figures of internal migration within Europe.

Table 2: architecture of pension systems in EU member states

| Country | First tier | | | Second tier | |
|-----------------|-----------------|-------|---------|-------------|---------|
| | resource tested | basic | minimum | public | private |
| Austria | | | | DB | |
| Belgium | ✓ | | ✓ | DB | |
| Czech Republic | | ✓ | ✓ | DB | |
| Denmark | ✓ | ✓ | | | DC |
| Estonia | | ✓ | | Points | DC |
| Finland | | | ✓ | DB | |
| France | | | ✓ | DB + Points | |
| Germany | ✓ | | | Points | |
| Greece | | | ✓ | DB | |
| Hungary | | | | DB | DC |
| Ireland | | ✓ | | | |
| Italy | ✓ | | | (N)DC | |
| Luxembourg | ✓ | ✓ | ✓ | DB | |
| Netherlands | | ✓ | | | DB |
| Poland | | | ✓ | (N)DC | DC |
| Portugal | | | ✓ | DB | |
| Slovak Republic | | | ✓ | Points | DC |
| Slovenia | | | ✓ | DB | |
| Spain | | | ✓ | DB | |
| Sweden | | | ✓ | (N)DC | DC |
| United Kingdom | ✓ | ✓ | ✓ | DB | |

Table adapted from (OECD, 2011, p. 107)

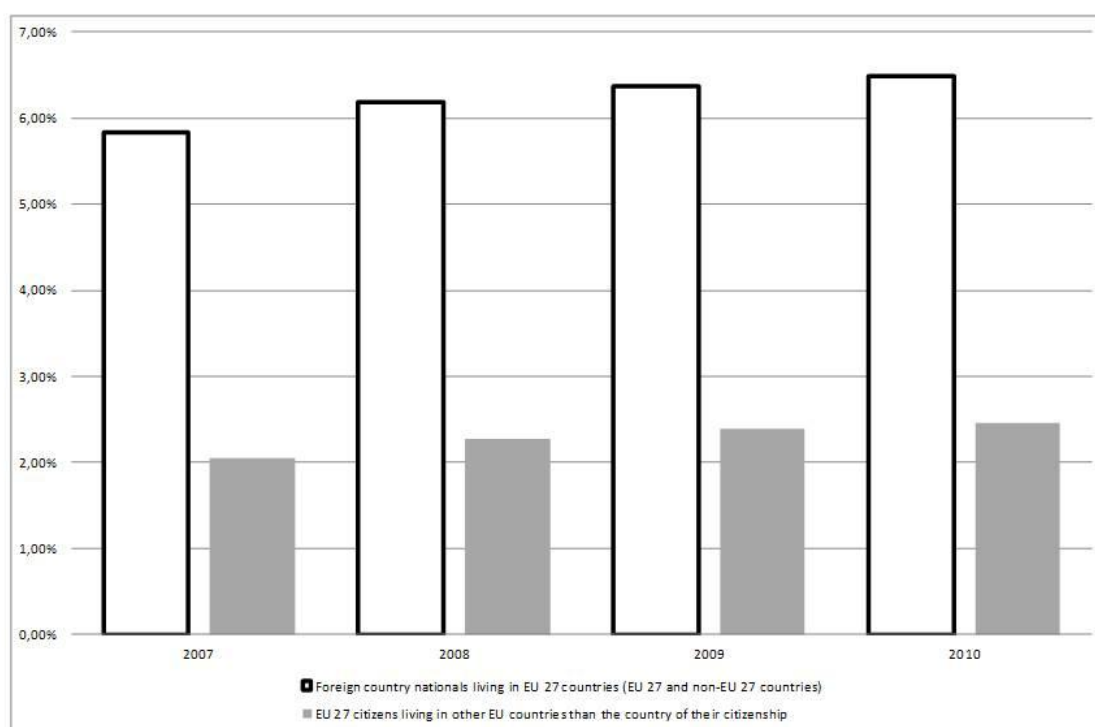
Migrant workers and their families in Europe

In line with the economic integration of Europe, the number of citizens of EU member states living in another country of the Union has increased. Latest figures for the year 2011 show that the group is bigger than 12 million individuals. In respect of the trend in the years 2002 – 2008 the number of citizens of EU 27 member states living and working in another member state (internal migrants) increased on average by 12 % year over year, and peaked in 2007 (European Commission, 2011, p. 17)

If we look into the relative share of migrant workers to the total population in EU 27 countries, we reach levels slightly above 2 % for the group of EU 27 citizens residing in other member states than their country of citizenship and more than 6% if accounting for all foreign nationals (internal and international migrant workers) – EU 27 and non-EU 27- residing in EU 27 countries. The group of EU-27 migrant

workers is therefore only making up slightly more than 1/3 of the total population of migrant workers that stood at 32 million in 2011.

Table 3: Share of foreign nationals living in EU 27 countries, in %

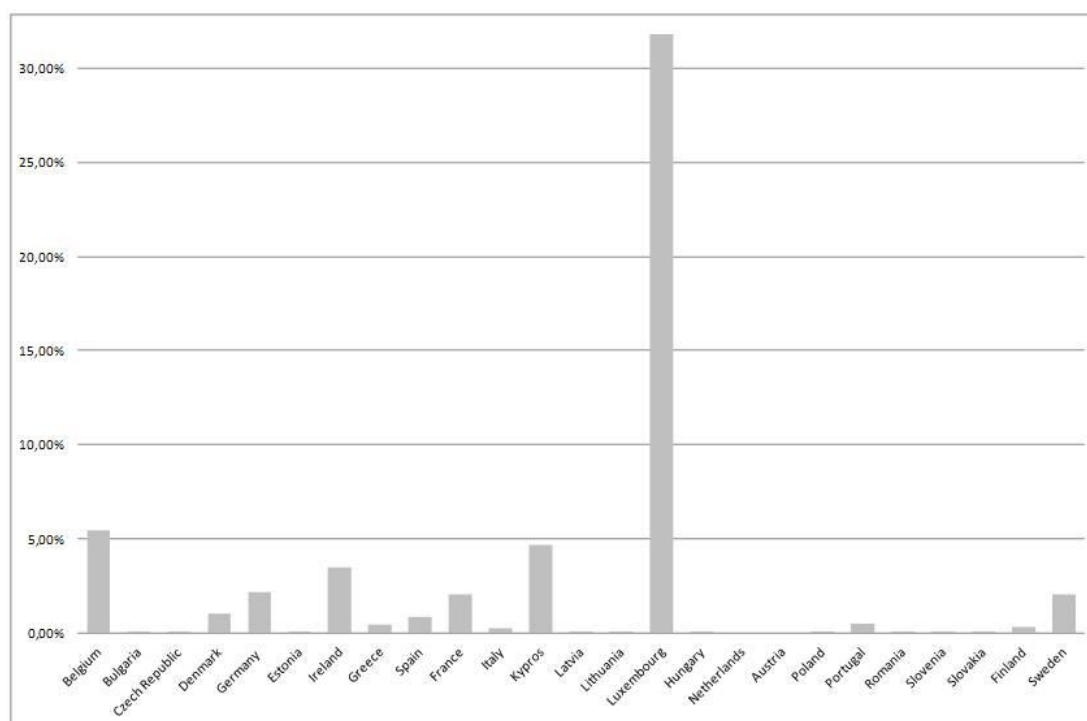


Data: Eurostat (2012) [migr_pop1ctz]

Member states of the EU 27 have very different histories as immigration countries and unsurprisingly also the share of citizens of other EU countries as part of the population of the respective individual countries differs a lot. The last census available that provides national level information on the share of registered EU nationals in other countries than their country of citizenship reveals that Luxembourg has by far the highest share with 35%, whereas Belgium, Denmark, Germany, Ireland, Spain, France, Cyprus and

Sweden, follow with a large gap, and the remaining countries having very low shares around or below the 1% mark.

Table 4: Share of citizens of other EU countries as part of population, in % (census 2001)



Data: Eurostat (2001) (cens_01nsczt)⁵

These figures in table 3 and 4 do however only measure the current stock of migrants in the countries and not the actual figures of persons with work histories in the different member countries or outside the union. It is exactly these figures which are required to give a picture of the need to establish measures to help that migrant workers rights to social welfare are guaranteed in full.

Since the figures for all EU member countries are not available, we present the figures of migrants receiving statutory pensions from selected EU member countries. In the German case, there are close to

⁵ No data available for the UK, missing data for Austria and the Netherlands which makes it impossible to compute the share.

1.2 million pensioners without a German nationality receiving old age pensions from the German pension insurance in 2011. 63% of these are EU citizens (Forschung Deutsche Rentenversicherung, 2011). Nonetheless, 95 % of all pensions paid to foreign nationals are based upon bi-lateral or international agreements.

Based on these insights from descriptive statistics and the empirical details of the German case we can conclude, that even though international migrants are clearly the majority of the stock of migrants within the EU, it is the number of EU citizens with a shorter work history in one or more EU member countries makes the majority of cases that measures to guarantee their rights are required. Furthermore, the stock of migrant workers measured as part the population differs largely across countries. Taken these observations together, we come the preliminary conclusion, that the functional pressure to find solutions for coordination or harmonization in the respective national social security system has a different intensity and therefore the incentives for national governments to include them in their systems might be diverse.

European integration and social policy between the national and supra-national

The European integration process is described by two distinct processes, **harmonization** and **coordination**. Whereas the first one is targeted towards convergence of policies and institutions across the member states, the second leaves existing national institutions intact and allows for ongoing diversity. These two processes can also be found in the field of social policy. An institution that has won in influence is the *European Court of Justice* (ECJ). The judiciary is getting an ever more prominent role as they rule on cases that concern conflicts between national and EU law. One sort of cases that we will also refer to later is “action for failure to fulfill an obligation”, an obligation that stems from EU law and binds national governments to comply. The *European Economic and Social Committee* is an assembly of currently 344 members representing economic and social interest groups across Europe. It has been established already in 1957 to provide a forum for discussing issue concerning the Single market and gives employer organizations, trade unions and other interest groups a channel to provide the decision making bodies of the European communities with advise and opinions on the policy process. Next to this body there exist other intergovernmental bodies that are dealing with more specialized issues of social policy across Europe. Within the *European Commission* the responsibility for social policy falls in the domain of the Directorate Employment. Previously the question of pension transferability has been located in the Directorate for the internal market.

Starting with the European Employment Strategy (EES) in the year 1997, the EU has started to build a stronger social profile with agendas to reach the general population of its member states. Supported by the

experience of the EES, the Lisbon Agenda of 2000 included major reference to social policy. With the goal to make the EU the most competitive and knowledge oriented market in the world, including social cohesion by 2010— meant an extension of fields of influence to social inclusion and education. The Open method of Coordination (OMC) was formally incepted as the “new” working method to achieve the goals set in the Lisbon Agenda (Dehousse, 2003). The OMC is same as other policy instruments of the EU a so called “soft governance tools”. The EU cannot enforce members to comply, neither can it make use of own funding in order to advance its policy ideas by bringing them into practice. Applying the OMC has been described as ‘two level game’ among member states governments and non-governmental actors over definitions and objectives, and later selective use of the policies to advance the respective agendas. Whereas the soft governance tools have oftentimes proven as effective to push forward innovative policy agendas, critiques call it too technocratic, and pinpoint the legal problem that it often means circumventing national legislative bodies (Büchs, 2008a, 2008b).

Social security for internal migrant workers

Looking into the treaties on which the EU is based, social policy remains in the domains of the national governments and the EU level’s competences are limited. When we are looking into the instruments that are available on the EU level to advance its social policy goals in the absence of own structures of social policy provision and limited financial resources available, these are first of all in the realm of law.

In respect of the EU budget, it in itself constitutes a key indicator for how constrained the activities of the EU. Based on an intergovernmental agreement, revenues are not allowed to exceed 1.23% of the EU's member states’ joint gross national income (GNI). An additional clause stipulates a strict balanced budget requirement. In the field of pensions, the EU does not have any administrative function. Social security law is part of the so called “Acquis communautaire”, a body of laws countries that wish to access the EU have to implement before they are officially made members. It is laws protecting the individual and also social rights. The Acquis contains respective laws that relate to freedom of movement for workers, social security arrangements for migrant workers. Firstly, it includes all community acts directed at the harmonization of respective national laws, equal treatment for men and women and the abolition of discrimination, employee participation and the protection of employees' rights in the event of the transfer of undertakings or the introduction of new forms of work. Secondly, there is the coordination of rules of national social security systems that does not touch upon their integrity of nationally based social security systems. Especially Eastern European countries had a number of new laws to be implemented prior their accession in the mid 2000s.

Harmonization

The EU with a major focus on a common market is especially interested in the field of social law that supports the mobility of qualified labor force. EU employment legislation guarantees minimum levels of protection that apply to everyone living and working in the European Union (European Commission).

In the laws referring to health and safety at work general rights and obligations, and criteria referring to workplaces, work equipment, specific risks and vulnerable workers are stipulated. However, apart from these very general principles, there is no harmonization of any other characteristics of old age pensions.

Coordination

Coordination of the social security systems can be found in nearly all areas of social security without challenging the national sovereignty in this realm. It covers the following programs: sickness benefits, maternity and equivalent paternity benefits, accidents at work, occupational diseases, invalidity benefits, old-age pensions, survivors' benefits, death grants, unemployment benefits, family benefits and pre-retirement benefits. Excluded are the programs of social and medical assistance, which are in general means tested and provided by local governments.

Internal migration and public pensions

Early rules concerning transferable social entitlements were contained in Regulations 3/58 and 4/58 of the year 1958. These regulations attempted to ensure coordination of entitlements for workers and self-employed people moving between the six early member states. Equal treatment for all workers (holding the nationality of a member state), and the aggregation of benefits within the EEC, and transferability of social benefits were inscribed as leading principle for administrations, same as the goal to be defined as co-ordination, not harmonization (Geddes, 2008).

The key regulation on social security coordination are issued by the European council in Regulation (EEC) No. 1408/71. This regulation on the application of social security schemes to employed persons and their families moving within the Community has been adopted in its original form on June 14, 1971 and rendered into force on October 1, 1972. Over the last four decades it has been amended numerous times – one could even say continuously. As the basic principle of coordination, the policies do not in any way replace existing national systems with a European one. Instead the focus lies on protecting the social rights of chiefly EU nationals but also nationals of non EU countries moving within or to any EU member country to work and live there. The national legislation, questions of benefit criteria and benefit levels are outside the reach of these regulations. Therefore the body of the regulations contains the overview of

existing bi-lateral agreements between member states and detailed descriptions, rather than a European norm.

Another major step of European integration with implications for the internal migrant workers of the EU is the Amsterdam Treaty of 1993 in which the rights of long term residents are strengthened. Internal migrant workers living for five or more years in a country must be guaranteed equal treatment with the respective country nationals in the realm of social policy, including the point of “Social security, social assistance and social protection, as defined by national laws” (Geddes, 2008, p. 163)

Coordination of social security within the EU follows four principles:

- **Principle of exclusive coverage:** Individuals are only subject to one country’s legislation at a time. Pension contributions are only paid in one country. This is the country in which the person is (self-) employed following the principle of *lex loci laboris*. In special cases, the decision which country's legislation applies to the individual is made by the social security institutions of the respective countries.
- **Principle of equal treatment /non-discrimination:** Individuals who reside in a another member state but their country of origin have the same rights and obligations as the nationals of the respective country.
- **Principle of aggregation:** When the pension level is calculated, all previous periods of insurance, work or residence in any EU member country are taken into account. This is especially applicable if a minimum number of insurance years is required to receive pensions (if applicable).
- **Principle of exportability:** If the individual is entitled to a cash benefit from one country, s/he may generally receive it, even if living in a different country.

Coordination principles have to be updated in regular intervals. The last time it happened was in May 2010 (**Regulations 987/2009**) (European Commission).

As for the concrete implementation, the regulation was accompanied for the first three decades by the Regulation (EEC) No 574/72 before Regulation (EC) No 883/2004 was repealing it, in order to simplify the coordination among member states social security schemes (Europe Direct). One of the key bodies of the coordination approach is *Administrative Commission for the Coordination of Social Security Systems*. This body is composed of representatives from the different national social security schemes and convenes twice a year in order to discuss issues concerning the coordination of the respective systems.

With regulation (EC) No 883/2004 it has become formalized, and received even the right to establish an operational permanent board.

Legal supervision and enforcement

The enforcement of the national laws that implement EU legislation is the responsibility of the relevant national authorities. A judgment of the EU level, by the European Court of Justice is only considered as an exception. Nonetheless, the number of cases brought in front of the European court, as European citizens feel that their rights have not been respected by the respective national governments and legal bodies, is increasing. The Court is limited to the interpretation of the social security coordination provisions in the light of a particular case. However, this interpretation is in form of case law binding for all parties involved. Previous rulings of national courts are overruled, and social security institutions and individual persons have to follow the judgment. One of the examples of European case law relevant for the portability of pensions is case C-124/99 - Borowitz 2001 against the German statutory pension insurance. The German pension insurance system paid lower amounts of pensions to persons residing outside of Germany, in the future it must pay out pensions in the same level to people abroad than to people in Germany. The exception are Third-country nationals, in that case Germany can lower the benefit level of up to 30 % (Holzmann & Koettl, 2011).

Concluding it must be noted that the initiative to guarantee access and the right to social security to internal migrant workers in Europe has a long tradition that started to be institutionalized already in the 1950s. Access and portability are guaranteed by a multitude of bi-lateral agreements of the member states of the EU that date in many instances to the early days of the European integration project, that did not have any social policy component. EU regulations on social security coordination are therefore giving rather a new external packaging than update content of these arrangements. It is therefore formally not the EU, but the member states themselves that bind each other mutually to the compliance, while rejecting harmonization from the European level. In recent years, the EU level could yet increase its influence on social policy by building up more strong capacities in the field of social security and the establishment of minimum standards to be adhered to by mainly new member states. Even after the EU has specified its criteria for minimum standards, it allows pensioners the freedom to choose from the bi-lateral agreements, if they happen to be more generous in nature. Especially the large disparity between generous and well established pension systems in the Western part of the European Union and the underdeveloped or lean pension systems in the East of the European Union will concern an issue of guaranteeing minimum standards while opposing further steps towards harmonization. European case law, and the institution of the European Court of Justice has developed into an independent force to guarantee the rights and

entitlements of internal and international migrant workers in Europe. Finally, we can say that the EU in 2012 is the Regime I – portability sustained by a high level of co-ordination among the member states of the EU, which fight clearly against harmonization of the pension systems.

With the rise of the fashion of pension privatization, occupational pensions have also come into the focus of bi-lateral agreements and EU wide standard setting. Any initiatives have so far yet proven to be unsuccessful (Haverland, 2007), partly due to the fact that the occupational systems play such different roles in the respective national systems, but also their nature. Whereas in some countries they do have statutory and mandatory character, in other countries they are based on voluntary character or are completely absent.

6. The People's Republic of China

In the last three decades, China has made remarkable achievements in its economic development. Comparatively, the building of a comprehensive social security system has been lagging behind which resulted in a steep increase in respect of social inequality. From 1949 – 1978, China's economy was largely run on basis of plans and free market forces were absent. In this era, all urban workers relied on the government to arrange jobs and received benefits from the work units, whereas rural residents could hardly receive any benefit from the government. In 1994, the Communist Party of China set the goal of building a socialist market economy. Ever since the establishment of a comprehensive social security system is considered as one of the four pillars of the socialist market economy. However, throughout the 1990s reforms were guided by market liberal ideas, such as decentralization and privatization, and failed to yield sound effects (Gongcheng Zheng, 2002, p. 28).

Triggered by the Asian economic crisis in 1998, large numbers of enterprises went bankrupt and lay-offs appeared in the millions, social contradictions became increasingly acute. As a consequence, the issue of building a social security system gradually drew the attention of the Chinese central government. Efforts were increased to build a social security system to cover both urban and rural residents. In urban areas, traditional work unit guarantee system was transformed into a public social security system; in rural areas, various public social security schemes were successively introduced as traditional family or community based schemes were rendered dysfunctional.

Nevertheless, China's social security system is still fragmented. Basic public old-age pensions are a key example of the territorial and occupational lines of fragmentation. China's old-age pension system is

designed for different groups in rural and urban areas. In 2012, we can differentiate among four types: (1) basic old-age pension system for enterprise employees in urban areas (BOISEE); (2) basic old-age pension system for civil servants (BOPSCS); (3) basic old-age pension system for non-employed urban residents (Urban social pension scheme = USPS); and (4) the new rural social pension scheme (NRSPS). For an overview of the insured persons under these schemes, the persons covered and responsible unit of government please refer to Table 5.

In terms of the governance of the system, we can observe a turn towards a more federal type since the mid-1990s. Traditionally and according to its constitution the P.R.C. is a unitary country ruled by hierarchical bureaucratic arrangements. However, starting with the tax sharing system reform introduced in 1994, China's administrative system is becoming more and more "federalized". Local governments' financial responsibility constantly expand, while the methods of regulation and resources for the central government to supervise and control over the sub-national units gradually weakens. Cooperation between sub-national governments at the same level is unstable, and a clear mechanism for communication between the central government and its subordinates is absent. A direct influence of the administrative system to the basic old-age pension system is a low level of social pooling. Even though the central government's preference is a pooling on national level, local governments have successfully prevented to lift the level of social pooling from local to national level and by far not all provinces achieve a pooling on provincial level (Frazier, 2010). The central government lacked for a long time a toolbox of positive incentives in form of additional financial resources or negative incentives in form of effective sanctioning. Therefore, China's basic old-age pension system is fragmented not only between urban and rural areas but also between regions.

Table 5. Current Basic public old-age pension system in China⁶

| Name of Systems | Date of Establishment | Target Group | Features of System | Number of Contributors (2011) | Number of Recipients (2011) | Responsible unit of government |
|-------------------------------|-----------------------|--|---|-------------------------------|-----------------------------|--|
| Systems in Urban Areas | | | | | | |
| BOISEE | 1995 | Employees with labor contracts (migrant workers included ⁷) are statutory participants, and self-employees are voluntary participants. | PAYG (the employer contributes 20% of total wage) + Individual Account (the employee contributes 8% of individual wage) | 215.7 million | 68.2 million | Bureau of Human Resources and Social Security of provincial level |
| BOPSCS | 1952 | Civil servants | Non-contributory pension | N/A | 40.2 million (2010) | Bureau of Human Resources and Social Security of provincial level ⁸ |
| USPS | 2011 | Non-employed urban residents over 16 | Non-contributory pension+ Individual Account | 2.8 million | 2.6 million | Bureau of Human Resources and Social Security of county level |
| Systems in Rural Areas | | | | | | |
| NRSPS | 2009 | Rural people | Non-contributory pension+ Individual Account | 237.2 million | 89.2 million | Bureau of Human Resources and Social Security of county level |

Migrant workers in China

Even though labor migration between Chinese regions was never absent, it was only with the reforms of the economic system and the relaxation of the enforcement of household registration system (hukou) in the 1980s that it turned into a mass phenomenon counting hundreds of millions people. Most of them – so called rural to urban migrant workers - come from the countryside to earn their living in cities.

Within China, there are two kinds of migrant workers: local migrant workers and outward migrant workers. Whereas the first group leaves the countryside to find jobs in cities close to their place of residence, so called outward migrant workers leave the countryside to find jobs in cities in other localities

⁶ Data Sources: Statistical Abstract of China (2012), Statistical Abstract of Civil Affairs of China (2012), Statistical Abstract of Labour and Social Security of China (2012).

⁷ Here refers to *Social Insurance Law of China*.

⁸ Ministry of Human Resource and Social Security is responsible for civil servants working for central government.

or even provinces outside their place of hukou. According to data from the China Household Survey, the stock of Chinese migrant workers in 2010 was 242.23 million, up 5.4% from the figures in 2009. They accounted for 18% of the national population, 36% of the rural population, and 69% of the labor force in urban areas. In practical terms this means that over 1/3 of the rural population leave their hometown to work in cities and become the main force in urban construction and manufacturing.

Whereas in the early 1980s labor migration was often seasonal, the patterns of labor migration have changed ever since and include not only longer periods of time but also the inclusion of family member in the migration. In respect of the numbers of outward migrant workers in 2010, the total figure stood at 153.35 million, out of which 30.71 million were accompanied by their whole family. From the perspective of industry, 36.7% of migrant workers are in the manufacturing industry, 16.1% in the construction industry, and 12.7% in the service industry. As to the regional distribution of the destinations of migrant workers we observe a transition. In the 1990s, there was a wide gap between regions in economic development. Most outward migrant workers were concentrated in the deltas of the Pearl River and the Yangtze River. With economic development in the central and western regions, the distribution of migrant workers in China became balanced gradually. In 2010, 31.8% of outward migrant workers are to be found in the eastern and coastal regions, 36.6% in the central regions, and 31.6% in the western regions of China. The Pearl River Delta even experienced a shortage of migrant workers in recent years.

The increase in the number of migrant workers is an important consequence of China's reform and opening-up period that has triggered economic development (Gongcheng Zheng & Wong, 2006). Mass labor migration as phenomenon has speeded up the processes of industrialization and urbanization in China. In the era of the planned economy, farmers were constrained in their labor mobility and the choice of their profession. Allowing them for free mobility within the territory of the PRC and taking up work in other sectors is, so to speak, a huge progress. However, the phenomenon of outward labor migration has major implications for the Chinese social security system in both urban and rural areas, and the individual migrant worker. Rights to social security of migrant workers after they came to cities are still unprotected, and the outflow of mainly young workers from the rural to urban areas undermines the traditional forms of social security in rural areas. According to statistics of the Ministry of Human Resources and Social Security of China, the population of migrant workers participating in the BOISEE as of the end of 2011 was 41.4 million, less than 18% of the total population of migrant workers. Local migrant workers face urban-rural fragmentation of the old-age pension system while outward migrant workers face both urban-rural fragmentation and regional fragmentation of the old-age pension system. For the receiving entities of outward migrant workers, the fact that the local economic development relies heavily on migrant

workers does not necessarily lead to improvement of the social protection situation of migrant workers and guaranteeing them access.

Decentralization and fragmentation of the public pension system in China

China's basic old-age pension system for enterprise employees has developed from the enterprise insurance system. For this and reasons embedded in the multi-level administration structure of the PRC the level of social pooling is low. In most Chinese provinces pension funds are pooled on the municipal-level. In 2012 there are more than 300 independent funds in China's basic old-age pension system and they cannot be adjusted with one another. When the income of an old-age pension fund is larger than its expenditure, the balance will be retained by the local government; conversely, the fund needs subsidy from local government finance. In such a situation, local governments' attitude toward migrant workers' participation in old-age pension scheme is subject to the influence of three factors: firstly, growth in income from migrant workers' participation in local old-age pension scheme; secondly, potential payment pressure after migrant workers participate in the old-age pension scheme; thirdly, influence of migrant workers' participation in the local old-age pension scheme to local enterprises' cost and competitiveness.

The first factor is often the reason for some scholars to criticize some local governments for incorporating migrant workers in the local old-age pension scheme. When the systems of different places cannot be combined, the mobility of workers means losses to existing participation rights. Therefore, local governments' act of encouraging migrant workers to participate in the old-age pension scheme seems to be a protection of migrant workers' rights but the real intention is to ease the payment pressure of pension funds. Guangdong is the province in China that receives most internal migrant workers. It is also the province that relaxed the limitation of household registration and allowed migrant workers to participate in the local old-age pension scheme first. However, because of urban-rural divergence in respect of the pension benefits, a large number of migrant workers withdraw from the pension scheme (Gongcheng Zheng & Wong, 2006).

The second factor is diluted by the fragmented system and the mobility of workers. Pension entitlements require usually a certain minimum contribution period, yet the majority of China's migrant workers tend to return to the countryside or small towns after different seasons or work in different entities over time (Gongcheng Zheng & Wong, 2007, p. 664). In these cases contribution periods are too short in order to qualify for pension benefits and there will be no payment pressure for local old-age pension funds.

The effect of the third factor is obvious in China. On the one hand, local governments are the "first group" to benefit from China's economic reform and development. Fiscal decentralization greatly

stimulates local governments to promote economic development and leads to a "race to bottom" of social security arrangements on the other. In the absence of local supervision and enforcement, enterprises evade the responsibility of paying old-age pension to migrant workers. Migrant workers familiar with these relationships and behavior of local economic and governmental agents, distrust the fragmented system and by the strong influence of the concept of family support for the elderly rather focus on income in the short term than rely on social benefits in the long run. In terms of the governance of public old-age pensions, respective organizations are subordinate to local governments rather than higher-level specialized line ministries. Instead of serving the purpose of guaranteeing social entitlements they default to conform to local governments' "low cost advantage" development strategy. Incentives to supervise enterprises' participation in the old-age pension scheme for migrant workers are rather low.

To sum up, against the backdrop of fiscal and administrative decentralization, Chinese local governments don't have enough incentives to increase the participation rate of migrant workers in the old-age pension scheme. Any activities to supervise or enforce measures that could undermine the maintenance of a "low cost" competitive advantage are avoided. Due to the missing trust in the fragmented old-age pension system (including urban-rural fragmentation and regional fragmentation) migrant workers also lack the willingness to participate in the old-age pension scheme and therefore do not become agents for better inclusion and portability of pension entitlements.

Guaranteeing Access and Rights to Old-Age Pensions for Migrant Workers in China

Transition at Legal Level and Transition of Local Governments' Governance Idea

In October 2010, the *Social Insurance Law of the People's Republic of China* passed deliberation and was put into effect on July 1, 2011. According to Article 10 of the law, urban household register is no longer the precondition for participation in the old-age pension scheme, and according to Article 95, migrant workers are legal participants of various social insurances. Therefore, participation in the old-age pension scheme has become explicit legal right and obligation of migrant workers all across China.

Moreover, the central government changes the performance appraisal method for local governments to promote the protection of migrant workers' rights to old-age pension (Lu, 2011). In the development stage with economic growth as the primary goal throughout the 1990s until the early 2000s, the central government evaluated local governments' achievements mainly by local GDP growth. With establishment of the "harmonious society" goal and the government governance idea of "social construction", the central government is gradually paying attention to the achievements of local governments in protecting the rights of citizens and improving welfare of people in areas under their jurisdiction (Ngok, 2009; Stepan,

2008). Some local governments thus came forward with local experiments and innovation. For example, Chengdu and Shanghai particularly set up fully funded old-age pension system to protect migrant workers' rights to old-age pension. Legal or administrative arrangements for the portability of earned entitlements were however absent. Until the central governments initiative for so called old age pension linkage mechanisms in 2009, migrant workers were cashing out their benefits once they left the entity they had been working in rather than trusting in a payment in the far future.

Linkage Mechanism for old-age pensions for migrant workers

According to the *Social Insurance Law*, the basic old-age pension system shall be in the national level of social pooling, but it is hard to be realized at present. Against this background, the central government decided to protect migrant workers' access and entitlements to old-age pension through a linkage mechanism between different regions. To this end, the Ministry of Human Resources and Social Security on behalf of the Chinese central government issued the regulation on the “Interim Measures for the Transfer and Continuation of the Basic Pension Insurance Relations of Urban Employees”, on December 28, 2009.

According to the regulation, the entitlements a migrant worker gained in one entity can be transferred to another entity the individual is migrating to. His/her personal account of old-age pension can be completely transferred, as can 60% of the total premium payments under the social pooling component. When the person retires, old-age pension will be calculated and given according to the wage level of the place where the premium has been paid for 10 years; if his/her premium payment in all places is less than 10 years, the old-age pension will be calculated and given according to the wage level of the place where his/her household is registered.

Thus, China solves migrant workers' rights to old-age pension mainly through efforts in two aspects: legal and administrative acts to strengthen rights and incentives for migrant workers to have access to public basic pensions, and the establishment of a nationwide pension linkage mechanism. In respect of the first the central government changed the way of evaluating local governments' performance and encourage local governments to protect migrant workers' rights to old-age pension, and clarified migrant workers' rights to old-age pension in the legislation of the Social insurance Law. Secondly, it established a nationwide old-age pension linkage mechanism at central government level rather than establish an inter-provincial cooperation and linkage mechanism. Obviously, unlike economic development in which local governments play a major role, the central government undertakes the principal responsibility in the establishment of a nationwide public pension system. Besides, the mechanism only solves the regional

fragmentation of the old-age pension system, but cannot solve the urban-rural one. For example, a farmer who has participated in the NRSPS and participates in the BOISEE when migrating to the city will necessarily suffer a disadvantage as the two systems still cannot be linked.

Capacity of Handling Organs and Supervision Mechanism

Although the right to guarantee access and mechanism for the portability of entitlements of migrant workers' has been established, these arrangements face problems in practice. Firstly, because the basic old-age pension system has been fragmented for long information systems of different areas under social pooling can hardly be compatible. This leads to difficulties in the course of transfer and continuation (B. Zheng, 2009). Secondly, since only 60% of funds under social pooling can be transferred, the sending entities suffer great pressure being in charge of the payout of benefits, while receiving entities even reap a benefit. Usually it is underdeveloped regions without sufficient fiscal capacity that face great pressure of fund balance, a problem that will even aggravate in the future. Thirdly, for the shortage of a nationwide information system, the participants have to go through complicated formalities for transfer and continuation of old-age pension relations at management agency on their own. In addition, there are problems with the supervision of participation and the mechanisms that shall guarantee the portability of entitlements. According to the *Social Insurance Law*, the function of supervision is not only in the hands of administrative authorities, but a committee consisting of representatives of the employer and employees, representatives of the trade union, and independent experts. The committee has no administrative capacity and legal enforcement powers, this makes the supervision effects sub-optimal. On a positive note, migrant workers' consciousness of rights safeguarding by law has been constantly enhanced in recent years. An increasing number of migrant workers resort to legal means to protect their social rights. Statistics show that among the recipients of legal assistance in 2010, 32.9% were migrant workers (China Statistical Office, 2011). However, the current legal system doesn't have regulations on penalty measures for management agency so that migrant workers still suffer from impairment of their rights to old-age pension.

Concluding, it must be said, that the system in China developed from the concurrent presence of regime II and III, into regime 0 – harmonization/ integration. This is due to the fact, that a national social security system with a specialized social administration and supervisory means was only built up in the recent decade. Previously the partial absence of clearly defined social rights or missing capacities made access exclusion and exportability the reality.

7. The EU and the PRC in perspective

In the previous two sections, we have described the existing arrangements in the PRC and in the EU respectively. This section will be dedicated to making a comparison of the regimes we observed in the two countries in the years 1993 – 2012 and looking for the explanatory power of the factors we identified earlier.

In the case of the EU we can observe that throughout the whole period, the regime I – portability was present in the countries being member of the EU. Different arrangements have existed in the countries that only during the period under study become members prior to their accession. Even though the requirement of the regime is one of the conditions for the candidate countries to become member states of the EU, a step towards regime 0 is out of reach at the moment.

The arrangements within China have been strongly affected by the establishment of the social security system that falls in the same time. Unsurprisingly, we observe less of stability in respect of the arrangements than we see in the EU. Whereas throughout the 1990s and early 2000s the regime types II and III were present, the outgoing first decade of the new millennium and especially the last two years have brought about the establishment of clear features of regime I, even though we can see similar resistance to the harmonization and control of the pension system and its fund local social security systems by Beijing (Frazier, 2010).

The state of social security system and social administration

In the member states of the European Union we see advanced social security systems, with the guarantee of social rights over the whole period under study. Social administrations are professional and in line with advances of IT technology and different initiatives led by the European Union to exchange best practice, information and data between national administrations. The coordination among national administration has improved and facilitated the implementation of access and portability of internal migrant workers.

In China the state of the social security system and social administration has undergone major reforms and made major advancements in respect of institutionalization in the years from mid-1990s to 2011 (Stepan, 2011). The reforms throughout the 1990s allowed to give the pension system a more clear outlook and public social administration was in the making, whereas the administration and provision of old age pensions had earlier rested with the work units. A real breakthrough in the access and portability of pension entitlements for internal migrant workers can be found in the codification of social rights in the *Social insurance law* of 2010 and other regulations that define the tasks of the social administration more

clearly. The professionalization and IT support of the social administration yielded additional positive effects.

Incentives for inclusion

As for the intrinsic incentives to allow internal migrant workers access and guarantee the portability of entitlements in the EU, we can refer back to the economic rational, that governments see the benefit of economic integration enhanced by the free mobility of labor, but also long established norms of equal treatment sustain the presence of access and portability arrangements.

In the Chinese case, the intrinsic incentives are at times less present. We like to conclude that this is less dependent on normative underpinnings but rather the scarce resources available to local governments who are in charge of providing old age pensions and necessarily focus on the group of regular participants rather than internal migrants. With the increasing appearance of labor shortages, the intrinsic incentives for local governments to attract migrant workers by providing access to old age pensions and respective benefits, might increase.

The externally imposed incentives also show major differences across the two entities and across time. In the European Union, we can see that the European level tried to increase its influence over national pension systems. Whereas it was successful in pushing forward co-ordination among member states and the guarantee of minimum standards, the failure to become more influential and push towards more harmonization can be accounted to the clearly constrained competences and the limited financial means compared to the national levels.

In the PRC, the central government had for a long time neglected the need to clearly guide the development of a national pension system and was deliberately allowing for local level diversity in the 1980 up until the early 1990s. Its key emphasis was on economic growth rather than social equality. At the turn of the millennium this stance shifted to a stance that both were combined. When starting with the turn towards more harmonization, it was first faced by strong opposition from richer provinces that were only in the middle up until the late first decade of the millennium overcome. A major role to turn the minds in favor of more inclusion were the adaptations in the cadre evaluation system to cover indicators like the coverage of social security systems in respective areas. In the time from the mid-1990s to the 2000s the financial means of the central government also improved largely, whereas the local governments were increasingly resource stripped. In this environment the Chinese central government could use its financial power to push the integration further forward and strengthen its supervision instruments.

Concluding on the comparison of the two cases, we can state that the existence of an advanced social security system and social administration that jointly guarantee the social rights are a necessary condition for the access and guarantee of the internal migrants in the receiving entities. The absence of these factors explain for the regime II and III in the PRC throughout the 1990s up to mid 2000s and its turn to a more integrative regime at the end of the decade. The difference we can observe in the time that China closes up to the Europe in respect to the first factor, can be explained by the difference in competence and administrative capacities of the higher level government to set the right incentives for the respective lower level governments in providing access and guarantee the portability of entitlements. Whereas the EU is constrained in that respect, the central government of the PRC increased its competences and managed to develop and direct its administrative and financial capacities to harmonize the system. The so called path dependency effect of the development of a fragmented social security system in China, and the diversity of providing access and guaranteeing entitlements across Chinese sub-national entities, was clearly ended by the agency of the central government.

8. Conclusion

The point of departure for this paper to find an answer to the question *“How is the access to public old age pensions and the portability of accumulated entitlements for migrant workers guaranteed in the territories of the EU and in China?”*. Whereas this question already bears societal and empirical relevance, we extended the scope to follow the question, how differences or commonalities can be explained. Building on existing scholarship on labor migration and the portability of public pensions, we built a theoretical framework to study these two questions.

In our empirical part on the PRC and the EU we show the developments of the arrangements in the respective entity to guarantee internal migrant workers access to public old age pensions and the portability of accumulated entitlements in the time from 1993 to mid-2012.

We show that the arrangements within the EU can be described by the regime I – portability over the whole period. Even though the European level gained in influence over the issue of social policy, its competences and financial means are yet too limited to push forward a regime of harmonization across countries, which would further facilitate the internal migration. Even though the EU has given itself a quasi-constitution with the Lisbon Treaty in 2010, it very much remains an intergovernmental entity rather than constituting a Federal Europe or even United States of Europe. In 2012 the EU comprises 27 countries with their own welfare state history, traditions and institutions. Competences of the EU are

therefore clearly constrained by national level actors, whose competences are guaranteed by treaties and the intergovernmental institutions such as the European Council.

In the Chinese case, we observe that the exclusion of internal migrant workers or local uni-lateral discretionary power to decide over terms of access and portability (regime II and III), is succeeded by regime 0 in the late 2000s. The change becomes possible through the commitment of the central government to push for the establishment of a nationwide social security system and the codification and guarantee of social rights.

From the comparison of the two cases, and especially the longer history of portability of pension schemes among the European countries leaves us with additional conclusions for further research. Even though the bi-lateral and multi-lateral agreements between EU member states exist for decades, enforcement and supervision remains a constant challenge. Cases brought in front of the European Court of Justice have repeatedly revealed the shortcomings in implementation or violation of principles. Furthermore, the agreements are object to change, as national reforms are ongoing. The word of the law or regulation does not mean much for the improvement of the situation of the migrant workers, if there is no clear implementation and supervision. One direction of research could therefore concern, in how far there is effective supervision of the implementation of the linkage mechanism within China, and how and to what extent national or more local judicial bodies influence this process.

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